HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition No.4792 of 2004

Date: 20th December, 2005

Between:

1. Guntuka Rajaveeru S/o.Gopal, R/o.H.No.A-96,

Padmanagar, Karimnagar Mandal and proper,

District Karimnagar and others.

.....Petitioners

and

1. Revenue Divisional Officer-cum-Land Reforms Tribunal,

Karimnagar, District Karimnagar and others.

.....Respondents

HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition No.4792 of 2004

ORDER:

This writ petition has been filed by the petitioners, who are three in number, assailing the order dated 02.02.2003 passed by the Revenue Divisional Officer-cum-Land Reforms Tribunal, Karimnagar, District Karimnagar-1st respondent in file No.C.C.No.KNR/1658/75 and all further proceedings with regard to allotment of the land admeasuring Ac.3.02 cents comprising Survey No.1224 of Karimnagar.

2. The background facts of the case, in brief, are: One Shaik Junaid filed a declaration under the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, (for short, 'the Act'). The Land Reforms Tribunal, Karimnagar took the declaration on file as C.C.No.KNR/1658/1975 and found the declarant as not surplus landholder by order dated 03.05.1977. The Authorized Officer filed an application under Rule 16(5) of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Rules, 1974, (for short, 'the Rules') on 29.08.1986 stating that there were calculation errors in determining the holdings of the declarant in the Order dated 03.05.1977. The Tribunal, on enquiry, found the declarant as surplus landholder to the extent of 0-2730 Standard Holding. Assailing the order of the Tribunal, the declarant filed L.R.A.No.31 of 1993 on the file of the Land Reforms Appellate Tribunal, Karimnagar, raising several grounds. One of the grounds is that the land in an extent of Ac.6.00 cents comprising Survey Nos.1222, 1223 and the land in an extent of Ac.2.00 comprising Survey no.1224 are covered by boulders and big earthen heap and that the said lands are not cultivable and the same are to be deleted from his holdings. The Land Reforms Appellate Tribunal by order dated 11.06.1993 rejected the same. The declarant questioned the order of the appellate tribunal by filing C.R.P.No.2224 of 1993. Pending the revision, the declarant died and his Legal Representatives viz. Shaik Abdul Raheem, Shaik Mohammadi, Shaik Ahmedi, Shaik Atiya, Shaik Tahseen, Shaik Yasmeen and Shaik Farheen came on record as per Orders in CMP No.1673 of 2000 dated 11.02.2000. The said revision came to be partly allowed by Order dated 10.04.2000. The relevant portion of the order needs to be noted and it is thus:

> "The only ground urged by the learned counsel for the appellant in the present revision is that admittedly these lands were not included in the holdings of the declarant earlier and all along his contention was that these lands are liable to be excluded from the holdings of the declarant and that if the said lands were included in the holdings of the second respondent, the same cannot be included in the holdings of the declarant. As the proceedings have not become final, he can raise that ground to the effect that once the land included in the holding of the declarant and the lower appellate tribunal is not justified in rejecting the same on the sole ground that this ground was not raised before the lower tribunal. There is sufficient force in the contention of the learned counsel for the petitioners. He also contended that in spite of the orders granted by this court on 26.10.1993 the authorities in highhanded manner taken possession of the property on 30.08.1994 and the same is illegal. It is needless to say the appeal is a continuous proceeding and the

declarant is entitled to raise all the contentions before the lower tribunal and one of the contentions he raised was that two survey numbers which were included in the holding of the declarant pursuant to the reopening of the matter contains certain Potekharab lands in the said survey numbers, the same cannot be included in his holdings. The proper course open for the appellate tribunal to know any Potekharab land in the above survey numbers and if the same has been computed that should have been ordered for deletion from the declarant's holdings. Such an exercise was not undertaken by the lower tribunal. In that view of the matter, the contention of the learned counsel for the petitioners cannot be rejected and it deserves to be accepted and the same is accordingly accepted.

Except the above ground, no other grounds were urged by the learned counsel for the petitioners. In that view of the matter, the matter is remitted to the lower court with a direction to dispose of the same and record a finding in this regard after giving an opportunity to the petitioners as well as the parties, who are effected and to verify whether any land is not cultivatable as the same contains with boulders, big heap of earth in the above survey numbers and if the lands are covered by Pot-Kharab, the same is liable to be excluded from the holdings of the declarant. The matter is remitted for enquiry for the above limited purpose only.

In the result, the revision petition is allowed in part, as indicated above. No order as to costs."

On remand, the Land Reforms Tribunal on hearing the counsel for both the parties, recorded a finding that an extent of Ac.3.01 guntas comprising Survey Nos.1222, 1223 and 1224 can be considered as Pot-Kharab and therefore, the same is liable to be excluded from the holdings of the declarant-Shaik Juniad. The relevant portion of the order dated 18.02.2002 passed by the Land Reforms Tribunal, Kharimnagar in C.C.No.KNR/1658/75 needs to be noted and it is thus:

"On perusal of the Khasra Pahani in respect of Sy.Nos.1222, 1223 and 1224 of Karimnagar, there was no pot-kharab recorded and as per the pahanies of 1357 Fasli and 1341 Fasli in respect of these (3) survey numbers only 0-18 guntas pot-kharab was recorded.

On perusal of the location sketch and Tippon submitted by the AD(S&LR), Karimnagar, in respect of Sy.Nos.1222, 1223 and 1224 it is shown that the pot-kharab to an extent of Ac.3.15 out of which it is shown 0-14 guntas as houses of some encroachers in the recent past and this cannot be considered as pot-kharab. Therefore, to an extent of Ac.3.01 guntas only area can be considered as pot-kharab which can be excluded from the holding of the declarant late Shaik Junaid.

It may be mentioned that subsequent to survey and settlement operations also in most of villages in view of the various developmental activities roads have been laid, channels have been dug or buildings have been constructed. All such lands, although not originally shown as "pot-kharab" in the survey and settlement records or Revenue Records for the reason that they were not in existence then have also to be excluded for they do not come within definition of "land" under Sec.3(1) of the Act.

In view of the above an extent of Ac.3.01 guntas i.e. Ac.3.02 cents land referred above which is find to be pot-kharab has to be excluded from the holding of the declarant. In the instant case, declarant's family unit was found to be holding an extent of 0-2730 S.H. in excess of ceiling limit.

The pot-kharab of Ac.3.02 cents i.e. 0-0604 S.H. is hereby excluded from the holding of the delcarant, hence it is declared that the declarant is having the excess holding as 0.2126 S.H. i.e, Ac.10.63 cents. This tribunal has earlier determined the excess holding of 0-2730 S.H. i.e. Ac.13.65 cents. The land in Sy.No.1222 extent 5.68 cents, 1223 extent 3.75 cents and 1224 extent 4.22 cents i.e. total extent of Ac.13.65 cents has already been taken into Government custody on the basis of the orders of this tribunal dt.30.08.1994 and 02.09.1994.

The area of pot-kharab to an extent of Ac.3.02 cents from Sy.No.1224 is hereby returned to the Legal Representatives of the declarant late Shaik Junaid, as part of the land in Sy.No.1224 is with the L.Rs. of the declarant.

The Mandal Revenue Officer, Karimnagar is directed to handover the land to an extent of Ac.3.02 cents from Sy.No.1224 of Karimnagar village."

Subsequently, one of the Legal Representatives of the declarant viz., Shaik Abdul Raheem (8th respondent herein) sold the land admeasuring Ac.3.02 cents comprising Survey No.1224 to the petitioners herein under registered sale deed dated 30.04.2002. The Land Reforms Tribunal noticed that some mistake crept in with regard to the land to be delivered to the Leal Representatives of the declarant and therefore, reviewed the order dated 18.02.2002 *suo moto* and thereby rectified the survey number of the land to be delivered to the Legal Representatives of the declarant from 1224 to 1222. Relevant portion of the order dated 02.02.2003 passed by the Land Reforms Tribunal, Karimnagar, whereunder mistake has been rectified reads as follows:

"As the matter stood so, the Hon'ble High Court of Andhra Pradesh, Hyderabad have passed orders dt.10.04.2000 in CRP No.2224 of 1993 with a direction to dispose of the case while considering potekharab, if any.

> Accordingly, the case has been disposed of on 18.02.2002 while deleting potekharab to an extent of Ac.3.02 cents from Sy.Nos.1222, 1223 and 1224 situated at Karimnagar proper. The potekharab extent of Ac.3.02 cents, which was deleted from the holding of the declarant was ordered to retransfer to the declarant from the Sy.No.1222 situated at Karimnagar. But, the clerk concerned typed the Sy.No.1222 as 1224 in computer, which is evident from the perusal of this office records. The correction i.e. 1224 as 1222 made in office copy was not corrected in the computer feeding. The fair copies taken print from the computers with wrong Sy.No.1224 were signed and despatched. This was brought to the notice of the court by the Asst. Director, P.H., Karimnagar. Hence, in order to rectify the clerical error, it is hereby ordered under Rule 16(5) of A.P.L.R. (COAH) Rules, 1974 that the potekharab extent of Ac.3.02 cents out of Sy.Nos.1222 situated at Karimnagar proper be retransferred to the declarant.
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> The M.R.O., Karimnagar, is requested to retransfer an extent of Ac.3.02 cents out of Sy.No.1222 situated at Karimnagar proper."

In pursuance of the orders passed by the Tribunal on 02.02.2003, the Mandal Revenue Officer, Karimnagar-4th respondent delivered possession of the land admeasuring Ac.3.02 cents comprising Survey No.1222 to the Legal Representatives of the declarant under panchanama dated 10.02.2003. The Legal Representatives of the declarant viz., Smt.Shaik Saleha, Shaik Mohammadi, Shaik Ahmedi, Shaik Atiya, Shaik Tahseen, Shaik Yasmeen, Shaik Furheen accepted delivery of the possession of the land under the cover of a panchanama dated 10-2-2003. Three persons viz., Gottimukkala Krishna Reddy, Nampelli Bhumaiah and Nafeez Khan acted as Panch witnesses for delivery of the land to the Legal Representatives of the declarant. On 14.07.2003 Shaik Abdul Raheem (8th respondent herein), from whom the petitioners claim to have purchased the land admeasuring Ac.3.02 cents comprising Survey No.1224, has submitted notarized affidavit before the Mandal Revenue Officer, Karimnagar. The notarized affidavit submitted by said Shaik Abdul Raheem reads as follows:

> "I, Shaik Abdul Raheem, S/o.late Shaik Junaid, Age 40 years, Occ: Business, R/o.Karimnagar, do hereby solemnly affirm and state on oath as follows:-
>
> 1. That my father-Shaik Junaid during his life time filed a ceiling declaration

U/S.18 of Land Reforms Act, which is dealt as file No.C.C.No.KNR/1658/1975 in Land Reforms Tribunal, Karimnagar. The Land Reforms Tribunal and Appellate Tribunal finally declared my father as excess landholder.

2. I further submit that my father challenged the orders of Land Reforms Tribunal and Appellate Tribunal in the Judicature of Hon'ble High Court by filing CRP No.2224/93, before the delivery of judgment he expired on 29.11.1998 leaving behind myself, my mother and my six sisters as sole legal heirs. Therefore, we joined as L.Rs. in the said case.

3. That the Hon'ble High Court while disposing the case on 10.04.2000 remanded the same to the Land Reforms Tribunal to resettle the issue after considering the pot-karab.

4. The Land Reforms Tribunal considered an extent of Ac.3.02 cents in Sy.no.1222 as pot kharab and decided to delete from the holding of my father.

5. It is further submitted that while issuing the orders the Sy.No. is wrongly typed as 1224 instead of 1222 and later on 2.2.2003 the competent authority issued revised proceedings and fixed 10th February, 2003 to take over the possession of the same.

6. It is further submitted that I came to know that the notice issued by the M.R.O. is received by my advocate and brought to my notice after the expiry of date fixed by the M.R.O., Karimnagar.

7. I further submit that my mother and 6 sisters taken over the possession of land in Sy.No.1222 on 10.02.2003 by signing on Form XI. After noticing the same I have also accepted the same. But, couldn't sign on Form XI. Therefore, I am herewith giving my consent before the authority in the form of Affidavit."

The grievance of the petitioners is that by the time the Land Reforms Tribunal ordered for rectification of the survey number *suo moto,* they acquired rights over S.No.1224 admeasuring Ac.3-01 guntas under a registered sale deed dated 30-4-2002 and therefore, any order rectifying a mistake in exercise of powers under Rule 16(5) of the Rules, without putting them on notice, is illegal, arbitrary and violative of the principles of natural justice. For better understanding of the grievance of the petitioners, I deem it appropriate to refer grounds (iv) and (v) in para.5 of the writ affidavit and they are thus:

"iv) It is submitted that there is no provision in the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 to correct the order, which is having a far reaching effect on the ground that there is a clerical mistake. The government wants a particular standard holding equal to the excess determined which has already been surrendered and accepted by the

Tribunal, from the accepted surrendered portion an extent of Ac.3.02 cents is returned in a particular survey number as mentioned in Form No.11. It matters very little for the government to take the excess land in any survey number but it has got far reaching effects when once the land is released after determination of the excess land in favour of the declarant and the declarant enters into a transaction of sale under registered sale deed dated 30.04.2002 for a valuable consideration of Rs.12,10,000/- and the possession of the same is delivered to them. There is no clerical error as such in the order dated 18.02.2002 nor it requires any correction by issuing a revised order. The whole exercise after a lapse of one year is the result of collusion and motivated as such liable to be set aside along with the subsequent action taken by the Mandal Revenue Officer Respondent No.4 herein by releasing again an extent of Ac.3.02 cents in Sy.No.1222 on 02.02.2003.

v) It may also be seen that the allotment to the two Residential Schools of Physically Handicap was provisional orders and the said two schools can also be accommodated in the remaining land of Sy.No.1222 and 1224 by recalling and resuming the possession of the Ac.3.02 cents of land from the Respondent No.8 in Sy.No.1222 or any other land held by him. No notice has been issued to the petitioners while passing the revised order dated 02.02.2003 while the petitioners are the persons who are directly and materially being effected by passing of the revised order and the subsequent proceedings thereof."

3. 4th respondent filed counter affidavit. It is stated in the counter affidavit that after the Land Reforms Tribunal has passed an order for return of land admeasuring Ac.3.02 cents comprising Survey No.1224 which was already handed over to the Assistant Director of Disabled Welfare, Karimnagar-3rd respondent, the 3rd respondent has moved an application under Rule 16(5) of the Rules before the Land Reforms Tribunal for correction of the order dated 18.02.2002. The Land Reforms Tribunal considered the said application and noticed the typographical mistake that had crept in the earlier order dated 18.02.2002 with regard to survey number of the land to be retransferred to the LRs of the declarant and thereby directed the Mandal Revenue Officer, Karimnagar, who is the 4th respondent herein, to retransfer the land admeasuring Ac.3.01 guntas comprising Survey No.1222 instead of Survey No.1224. Pursuant to the order dated 02.02.2003, the land in Survey No.1222 admeasuring Ac.3.01 guntas was handed over by the Mandal Revenue Officer to the widow and six daughters of the declarant. The 8th respondent, who is

also one of the Legal Representative of the original declarant, was not available to sign in the delivery statement and a notarized affidavit was submitted by him on 14.07.2003 accepting the surrender of land in Survey No.1222 as directed by the Land Reforms Tribunal on 02.02.2003. It is further stated in the counter affidavit that the original declarant has surrendered the lands comprising Survey Nos.1222, 1223 and 1224 and after surrender, the lands in Survey Nos.1223(part) and 1224(part) were handed over to the different departments for public purpose. It is also stated in the counter affidavit that the Mandal Revenue Officer has not handed over the possession of the land in Survey No.1224 to the 8th respondent who is one of the Legal Representatives of the declarant. The certificate filed by the petitioners is not a valid certificate and it is not issued by the competent authority-Mandal Revenue Officer and it is not countersigned by the Mandal Revenue Officer as required. The 3rd respondent who has taken possession of the land in Survey Nos.1223(part) and 1224(part) for establishing the schools has identified the 7th respondent as its contractor and entrusted the construction work to the 7th respondent in the year 2003 itself. The 7th respondent has already started constructions and the same is almost completed upto the roof level. While the said work is in progress, the writ petitioners without any right over the land in Survey Nos.1224 or 1223 have filed this writ petition and obtained orders of *status quo*. The Mandal Revenue Officer has handed over the land admeasuring Ac.3.01 guntas comprising Survey No.1222 to the Legal Representatives of the original declarant under the cover of a Panchanama. Thus, the Legal Representatives of the declarant have no right over the land in Survey No.1224 which was taken possession in the year 1994 itself and handed over to the 3rd respondent in the year 1999. By virtue of the interim orders granted in W.P.M.P.No.16424 of 2004 dated 24.01.2005, the construction work of the hostel and school buildings for visually handicapped and physically handicapped is held up. The 3rd respondent has lodged a complaint with Karimnagar Rural Police complaining the frequent interference of the petitioners and thereupon the Police registered a case in Crime No.90 of 2005 and the same is pending investigation.

4. Heard learned counsel appearing for the petitioners and learned Government

Pleader for Revenue appearing for the respondents 1 to 4.

5. Learned counsel appearing for the petitioners submits that the correction of the survey number to be delivered to the Legal Representatives of the declarant is not a clerical mistake within the meaning of Rule 16(5) of the Rules and it is a mistake effecting the rights of the petitioners substantially and therefore, the order passed by the Land Reforms Tribunal rectifying the survey number without putting the petitioners on notice is arbitrary, illegal and violative of the principles of natural justice. The learned counsel further submits that the correction of the survey number which is to be retransferred to the Legal Representatives of the declarant amounts to reviewing the earlier order dated 18.02.2002 and thus, interested parties are required to be heard before any amendment to the said order. The learned counsel vehemently contends that by the time the order impugned in the writ petition came to be passed, the petitioners acquired title and possession over S.No.1224 admeasuring Ac.3-01 guntas under a registered sale deed executed by the 8th respondent, who is one of the Legal Representatives of the declarant, and thus, any amendment made to the original order dated 18.02.2002 without putting the petitioners on notice would not bind them. In support of his submissions, reliance has been placed on the judgments of our High Court in ***J. Abid Hussain v. R.K.Paul*** and ***P.Ankinnedu v. Sri Bavaji Mutt***. In ***J.Abid Hussain v. R.K.Paul*** (1st supra), it has been held that though a correction could be made under Section 152 of C.P.C. at any time, such a thing is possible only as long as interests of third parties do not intervene; *Secondly*, any inertia on the part of a person asking for the amendment should not be tolerated when the third parties acquire interest, though it is necessary that the third parties should have acted in good faith without the knowledge of the defective decree. I n ***P.Ankinnedu v. SriBavaji Mutt*** (2nd supra), it has been held that the amendment of decree, which radically changes its texture, allowed without notice to affected party is invalid.

6. Learned Government Pleader for Revenue appearing for the respondents 1 to 4 submits that the Legal Representatives of the declarant accepted delivery of

the land admeasuring Ac.3.02 cents comprising Survey No.1222 and therefore, the petitioners, who claim to have purchased the land bearing Survey No.1224 from one of the Legal Representatives of the declarant has no *locus standi* to question the order dated 02.02.2003 which had already been worked out. In support of his submissions he refers the surrender statement submitted by the declarant, the panchanama dated 10.02.2003 signed by the widow and six daughters of the declarant and the notarized affidavit submitted by the son of the declarant (8th respondent herein and vendor of the writ petitioners).

7. The declarant surrendered the following lands on 01.09.1994 towards his surplus holding:

1. Survey No.1222 - Ac.5.68 guntas

2. Survey No.1223 - Ac.3.75 guntas

3. Survey No.1224 - Ac.4.22 guntas

Total - Ac.13.65 guntas

The Mandal Revenue Inspector took possession of the above said lands on 16.09.1994 in the presence of the panchayatdars viz., Joginipilli Sudhakar Rao son of Venkatrao, Madati Poornachander son of Kishan Rao and Kasarapu Manohar son of Venkatarao vide page No.2-A of the material papers filed along with the counter affidavit of the 4th respondent.

8. The writ petitioners placed on record the Photostat copy of the registered sale deed dated 30.04.2002. The petitioners have not placed any satisfactory material to show that the land bearing S.No.1224 has been retransferred to the LRs of the declarant in pursuance of the order dated 18.02.2002. As per the Order impugned in the writ petition, survey number to be delivered to the Legal Representatives of the declarant has been rectified from 1224 to 1222. The widow and six daughters of the declarant accepted retransfer of the land

admeasuring Ac.3.01 guntas comprising Survey no.1222. The 8th respondent who is one of the Legal Representatives of the declarant and who is said to be the vendor of the petitioners also filed notarized affidavit acknowledging the retransfer of the land to his mother and six sisters. The contents of the notarized affidavit has been detailed in the afore said paras of the order. When the order impugned in the writ petition has been worked out and none of the Legal Representatives of the declarant raised any objection to it, the petitioners, who claim to have purchased the lands in Survey No.1224 from one of the legal representatives of the declarant, cannot be permitted to question the order dated 02.02.2003 where under survey number of the land has been rectified. Under Rule 16(5) of the Rules the Land Reforms Tribunal is empowered to correct any clerical or arithmetical mistakes. In the circumstances of the case, the rectification of survey number in the order dated 18.02.2002 is only a clerical mistake which mistake has been duly rectified by way of the order impugned in the writ petition. Therefore, I find that the writ petition is devoid of merits and the same is liable to be dismissed.

9. Accordingly, the writ petition is dismissed. No costs.

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B.SESHASAYANA REDDY, J.

Date: 20th December, 2005

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HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

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Dt: 20-12-2005